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Expert Group Meeting on Guidelines for the
Import, Assembly and Manufacture of
Agricultural Machinery and Training

Vienna, Austria, 9-12 September 1985

REPORT*

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INTRODUCTION

1. The Expert Group Meeting on Guidelines for the Import, Assembly and Manufacture of Agricultural Machinery and Training was convened in Vienna, Austria, from 9 to 12 September 1985. The meeting was attended by 12 participants and 1 observer from 12 countries and one United Nations body (see Annex I).

Background

2. The developing countries currently meet their agricultural machinery needs either wholly from imports or from varying degrees of local manufacture. In both cases, however, rational import policies are often lacking, which not only contributes to the deterioration of the countries' trade balance, but also means that resources are wasted on inappropriate technologies. It is essential to underline the large variety of equipment and the poorness of after-sales services from many suppliers. Moreover, demand in the developing countries continues to be influenced by supply from the developed countries. In order to ensure that any contract between importers or local manufacturers and their foreign partners is to be equitable and economically viable, it is essential to strengthen the negotiating and contracting capabilities of the developing countries, thus enabling them to achieve their agricultural mechanization objectives.

3. One of the key recommendations of the First Consultation on the Agricultural Machinery Industry,[1/] held at Stresa (Italy), in October 1979, was to "prepare for the next Consultation model contracts to deal with import policies, licensing for local manufacture and joint ventures, taking into account, wherever appropriate, the model contracts under preparation within the framework of the UNIDO System of Consultations". A meeting of experts, held at UNIDO Headquarters in Vienna in February 1981, recommended that the elaboration of model contracts be included among the subjects to be discussed during the Second Consultation on this sector.

1/ See Report of the First Consultation on the Agricultural Machinery Industry, ID/230, para. 2(x).

4. In that connection, UNIDO prepared a document entitled "Main items to be included in model contracts for the import, assembly and manufacture of agricultural equipment, including training: Model Licensing Agreement". That document contained draft clauses considered essential for the preparation of contracts in the field of agricultural machinery, especially between customers in developing countries and suppliers in industrialized countries. In this wide field, the legal arrangements proposed in the document could only constitute a reference framework to be supplemented according to the wishes of the interested parties and national legislation. It is clear that contracts do not exist in a legal vacuum but are necessarily linked to the laws of one or several countries.

5. That document, which constituted a first step to the implementation of the above-mentioned recommendation of the First Consultation, was submitted for general comments to an Ad-hoc Informal Expert Group Meeting, held in Vienna, from 22 to 25 March 1983. It was then revised before being submitted as a working paper to the Second Consultation.

6. The Second Consultation reviewed and discussed the provisions and clauses proposed in the document. It recommended that "UNIDO should prepare guidelines for the import, assembly and manufacture of agricultural machinery and training. The guidelines should take due account of the documentation considered by the Second Consultation, the views expressed on it, relevant documents of national and international institutions and the views that may be communicated to the UNIDO secretariat by the participants and other interested parties within the next four months as well as the experience gained in the work on contractual arrangements within the framework of the UNIDO System of Consultations".[2/]

7. Another task conferred upon UNIDO was to convene an international group of experts (which should be selected from developed and developing countries and from among participants of the Second Consultation) to discuss and agree upon the guidelines and the necessary elements that would ultimately lead to the

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2/ See ID/307, para. 17(a).

finalization of model contracts.[3/] The expert group meeting was directed to present alternatives in the guidelines for model contracts where any disagreement as to the contents of any clause was apparent.

Objective of the meeting

8. On the basis of the above considerations, it was intended to elaborate legal frameworks which could be used to provide guidance in solving the negotiating and drafting problems most commonly faced by the contracting parties, and for which many developing countries are not adequately prepared. The meeting was also to discuss the guidelines prepared by the UNIDO secretariat and agree upon the necessary elements that would ultimately lead to the finalization of model contracts.

Documentation

9. The documents issued for the meeting are listed in Annex II.

I. AGREED CONCLUSIONS AND RECOMMENDATIONS

10. In the light of the overall goals, objectives and topics examined by the participants, the following conclusions and recommendations were reached:

(a) The participants agreed that the existing Guidelines had formed a useful basis for their deliberations. They also agreed that those Guidelines should be further elaborated in the light of the suggestions and recommendations that had emerged during the discussion. In particular, the structure of the Guidelines should be modified to bring to the notice of the reader the sequence of planning, negotiation and contracting which accompanied the conclusion of the contracts dealt with in the Guidelines. In that regard, the Meeting adopted the basic outline which was to serve as a guide to the secretariat in its future work (see Annex 3).

3/ See ID/307, para. 17(b).

(b) Consideration was given as to what further work was needed to make the Guidelines more useful to Governments and the business community in accelerating technology transfer. One possibility was to elaborate the Guidelines in their present format, and later to prepare separate model contracts on the issues dealt with in the Guidelines. After discussion, the prevailing view was that the drafting of model contracts presented certain difficulties. In the first place, a number of model contracts would be needed to take into account the variety in trading patterns and different practices prevailing in different regions. Furthermore, experience had shown that the drafting of model contracts entailed considerable time and expense.

(c) In view of the above considerations, the participants recommended that the Guidelines be elaborated together with model or illustrative clauses attached to the text of the Guidelines and reflecting the approaches set forth in the Guidelines. Alternative clauses could be set forth wherever necessary. Such a method would result in a document which would be easily understandable and useful to Governments and to the business community through international co-operation, and would also achieve in substance the objectives of the recommendation made at the Second Consultation on the Agricultural Machinery Industry (Vienna, 17 to 21 October 1983).

(d) It was emphasized that training was an important component of the contracts considered in the Guidelines and should be undertaken at various levels in order to ensure the successful implementation of the contract. In particular, it was important that training of the purchaser's manpower sufficient for the efficient operation of the plant was undertaken well in advance of the time that the plant was to be commissioned or put into operation.

(e) Considering the value of the documents containing sample clauses for contracts involving various activities, it was recommended that such documents be given the widest dissemination possible.

(f) The participants welcomed the valuable co-operation between the secretariats of UNCITRAL and UNIDO and recommended that that co-operation should continue in the future work on the Guidelines.

II. ORGANIZATION OF THE MEETING

Opening of the meeting

11. The Expert Group Meeting was opened by the representative of the Head of the Negotiations Branch of UNIDO. He pointed out that developing countries accounted for about 10 per cent of the world production of agricultural machinery, whilst representing more than 80 per cent of the world farming population. There were, he said, enormous needs for equipment for the agricultural and rural activities in the developing countries. Taking into account that fact, the development strategies of developing countries were beginning to attach priority to satisfying the basic needs of their populations, in particular as regards food production and food security. The Lagos Plan of Action emphasized those objectives as far as Africa was concerned. That led to a growing awareness of the need to strengthen the indigenous capacity for the production of agricultural machinery suitable to local conditions.

12. He pointed out that negotiations with foreign partnerships had a crucial role to play in supporting the efforts required to meet the challenge of food security and self-sufficiency. In order to achieve their agricultural mechanization objectives, developing countries needed effective means/instruments of strengthening their negotiating and contracting capabilities, individually or collectively, to obtain favourable terms for the acquisition of technology, expertise, licenses and equipment.

13. It would obviously be advantageous to both North and South to orient their negotiations to fit in with developing countries' growing needs. Towards that end, the secretariat put before the meeting documentation composed of Guidelines to International Contracts for the Acquisition, Assembly and Manufacture of Agricultural Machinery and a draft of a number of sample clauses considered essential in preparing contracts in the field of agricultural machinery.

14. He stressed that those Guidelines, which would constitute the main element of the discussions, were a result of a distillation of documents submitted by various interested parties, including national and international bodies,

certain other material of international character and the views expressed by participants at the Second Consultation on the Agricultural Machinery Industry, held in Vienna in October 1983.

15. Based on those documents, the deliberations would then relate to the necessary models of contractual arrangements to govern the purchase, assembly and manufacture of agricultural machinery. The elaboration of such models of contract had been tried and found mutually advantageous in other contexts. In UNIDO's experience both suppliers and purchasers had welcomed any transparency that could be brought into their relationship. It created a more solid and stable foundation on which to base present and future transactions.

16. He encouraged the participants to discuss and agree upon the necessary elements that would ultimately lead to the finalization of model contracts. He also suggested that the meeting deal with the question of how those legal models could reach the hands of potential users. He emphasized that the objective of the meeting was to have a positive impact on the agricultural machinery sector in developing countries.

Election of officers

17. Mr. Ceferino L. Follosco (Philippines), President, Alpha Machinery and Engineering Corporation, was elected Chairman.

18. A drafting group was elected to prepare the draft conclusions and recommendations, composed of Messrs. S. Basnayake, C. L. Follosco, and members of the secretariat.

Adoption of the agenda

29. The following agenda was adopted:

1. Opening of the meeting
2. Election of officers
3. Adoption of the agenda
4. Presentation by the UNIDO secretariat
5. Discussion and exchange of experiences
6. Adoption of the conclusions and recommendations of the meeting.

Adoption of the conclusions and recommendations

20. The conclusions and recommendations of the meeting were adopted by consensus at the closing session on 12 September 1985.

III. SUMMARY OF DISCUSSIONS

Presentation of the background papers

21. Ms. Ruth Fitz Gerald, UNIDO consultant, author of the Guidelines to International Contracts for the Acquisition, Assembly and Manufacture of Agricultural Machinery and Spare Parts Therefor[4/] and of the documents on Comparison of Sample Clauses[5/], introduced those background papers which were submitted to the experts for discussion. She said that in preparing both the Guidelines and the sample clauses, consideration had been given to the different material and views existing in respect of contracts for the import, assembly and manufacture of agricultural machinery. Neither the Guidelines nor the model contracts could have been drafted without first surveying the documentation available. For that reason it had appeared useful to present to the Expert Group a comparison of documents and views existing, as well as the provisions of the contracts under consideration, to enable them to carry out their function as recommended by the Second Consultation on the Agricultural Machinery Industry. Furthermore, a systemized compilation of the material available could be of assistance in informing the Expert Group on the alternative provisions which could be included in the model contracts under consideration.

22. The secretariat had undertaken the task of compiling the clauses described in different guides, model forms and precedents dealing with the types of contract in question. Among the documents had been those submitted by various interested parties, including national and international bodies, and other material of an international character, traced with the aid of the UNCITRAL Library.

4/ ID/WG.443/1

5/ ID/WG.443/2 to 7.

23. The source documents had not only been numerous but varied greatly in content - in particular, the quantity of detail included - and style. Therefore, after having brought together the source material in rough form, the information and ideas contained in the guides, model forms and precedents had been systemized, reduced and streamlined, and provisions drafted for the various contracts, drawing the contents of the clauses from the source documents. Where the material had indicated that entirely different approaches could be taken to the subject matter of a clause, alternative and additional provisions had been drafted. Those draft clauses appeared in table form in documents ID/WG.443/2 to 7. A maximum of three examples were given in respect of any one clause and possible additional provisions to the clauses were included. The draft clauses were classified into those which were necessary to the contract in question, those which were recommended to be included and those which were optional.

24. The source material of the Guidelines was indicated in the documents on Sample Clauses. Some additional ideas were included. The aim of the guidelines was to set out briefly for the prospective purchaser the purpose of the various clauses included in the contracts under consideration. An attempt was made to provide definitions of terms commonly appearing in contracts. Criticism of the Guidelines was particularly necessary as regards their clarity.

25. Ms. Fitz Gerald then briefly described the contents of the Guidelines paragraph by paragraph.

General discussion

26. The participants discussed whether such guidelines should be addressed only to individual purchasers or also to distributors of agricultural machinery and spare parts. The question was raised whether they should give assistance to private companies or to the public sector.

27. It was agreed that the guidelines could be valuable to all persons interested in purchasing agricultural machinery and spare parts, no matter whether they represented private companies or the public sector.

28. Some participants pointed out that because of the fact that many developing countries were gravely indebted, such contracts could be concluded on a high level only, i.e. the governmental level, even on the supplier's side. The experts concluded that such types of contract had to be negotiated between the relevant parties. However, there could be additional or special provisions required by the authorities which the partners would have to comply with. Moreover, in some cases, the entering into force of such contracts needed additional agreements between the Governments of both parties. Such additional agreements might deal with special payment conditions, barter business, compensation deliveries, long-term credit provisions, etc. Therefore, the guidelines to different types of contract could be considered useful for negotiators in developing countries. They were neither contradictory to possible complementary agremeents concluded on a higher level, nor did they prevent the partners from respecting prevailing statutory rules or governmental instructions.

29. The participants agreed that the guidelines could be useful to end-users as well as to distributors. It had to be emphasized, however, that the distributors would have to take the views and interests of the end-users into account when negotiating a contract.

30. As to the different contractual forms, the participants found it recommendable to use commonly known terms for contractual arrangements, such as those mentioned in UNIDO model contracts for other industrial fields (e.g. the fertilizer industry), where the following forms were indicated:

- turn-key contracts,
- semi turn-key contracts,
- cost-plus or cost reimbursable types of contract.

The meaning of those types of contracts should be explained briefly in the guidelines, where reference should also be made to joint venture business.

31. As to the question whether the contractual provisions and clauses should be exhaustive or indicative, the experts agreed that the general provisions in the guidelines should rather be indicative. The specific clauses, on the other hand, needed utmost accuracy in order to avoid to the greatest possible extent disputes during the implementation of the contract. Experience had shown that in spite of diligence, accuracy and proper wording of the different clauses, discrepancies might arise between the parties in the interpretation of any of the contractual provisions. Therefore, it was in the interest of both parties to try to lay down their contractual arrangements in the most appropriate manner.

32. The participants referred also to the need to rationalize the agricultural machinery being imported to the purchser's country generally so as to limit that machinery to a manageable number of models. They pointed out that the more requirements the purchaser makes of the supplier, e.g. an unusually lengthy guarantee period, the greater will be the cost of the equipment or service.

33. The participants also discussed the supplier's responsibility for the suitability of the agricultural machinery to be delivered. It was pointed out that very often suppliers differentiated between a purchaser who would buy only a small quantity of agricultural machinery and a "big" client. In other words, in the case of a relatively small market, the supplier would be reluctant to investigate the local conditions at his/her expense, so that the purchaser had to take the risk whether the equipment bought by him/her was suitable to the local conditions, provided that the delivered goods met the contractual specifications. However, if the market appeared to be important to the supplier, the purchaser might request the supplier to investigate the local conditions (e.g. by means of a feasibility study) before the conclusion of the contract and to take the responsibility for the suitability of the machinery to be delivered.

34. The experts agreed upon the great importance of after-sales services and training of the purchaser's manpower, to be undertaken by the supplier. The Guidelines should emphasize the training aspect and recommend to the purchaser the inclusion of specific clauses on that subject in the contract.

35. The terms "damages", "liquidated damages", and "penalty" were extensively discussed. The guidelines should provide brief explanations of those terms and refer to the commercial aspects of possible sanctions in the case of non-observance of contractual obligations by the supplier.

36. As to the establishment of contractual prices for spare parts, the participants agreed that examples of feasible methods for pricing should be given in the guidelines, in order to protect the interests of the purchaser as much as possible.

37. The discussion on the term "know-how" revealed that different meanings were attached to it under different legal systems. The experts agreed that it should be explained in which sense the term was used in the guidelines.

38. The specific amendments recommended to be made in document ID/WG.443/1 are listed in Annex IV.

Annex I

List of Participants

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Annex II

List of documents

Guidelines to International Contracts for the Acquisition, Assembly and Manufacture of Agricultural Machinery and Spare Parts Therefor	ID/WG.443/1
Comparison of Sample Clauses for Contracts for the Supply of Spare Parts for Agricultural Machinery	ID/WG.443/2
Comparison of Sample Clauses for Contracts for the Initial Management of a Factory for the Assembly or Manufacture of Agricultural Machinery and the Rendering of Technical Assistance Ancillary Thereto	ID/WG.443/3
Comparison of Sample Clauses for Contracts for the Supply and Installation of Production Equipment for the Assembly and Manufacture of Agricultural Machinery	ID/WG.443/4
Comparison of Sample Clauses for Contracts for the Transfer of Know-how, Grant of Patent/Trademark Licences, Assignment of Technical Information and the Rendering of Technical Services Ancillary Thereto for the Manufacture of Agricultural Machinery	ID/WG.443/5
Comparison of Sample Clauses for Contracts between Clients and Industrial Architects for the Design and Supervision of the Construction of Works for the Assembly or Manufacture of Agricultural Machinery	ID/WG.443/6
Comparison of Sample Clauses for Contracts for the Supply of Agricultural Machinery	ID/WG.443/7

Annex III

Outline

I. Table of Contents

II. Preface

III. Introduction

a) The Need for Contracts
b) General Areas of Activities

1. Importation of Agricultural Machinery and Spare Parts
2. Assembly and Manufacture of Agricultural Machinery

c) Steps and Sequences of Assembly and Manufacture

1. Feasibility Studies
2. Project Financing
3 Design and Production Processes, including Production Equipment
4. Design of Buildings and Facilities
5. Design of Civil Works
6. Supervision of Construction
7. Supply and Installation of Production Equipment
8. Supervision of Installation of Production Equipment
9. Inspection and Tests, prior to Commissioning and Provisional Acceptance
10. Management and Training
11. Guarantee and Inspection prior to Final Acceptance
12. Final Acceptance

d) Methods of Undertaking Assembly and Manufacture

1. Licensing
2. Joint Ventures

e) Contractual Forms

1. Turnkey
2. Separate approach

f) Considerations in Drawing up Contracts

IV. Guidelines for Supply and Distribution of Agricultural Machinery and Spare Parts

1. Quality and Suitability
2. Price
3. Delivery and Compensation of Delays
4. Technical Information
5. Stock Manufacture
6. After-Sales Service
7. Warranty
8. Territory
9. Duration
10. Advertising and Sales Promotion
11. Terms of Payment (Credit, Countertrade)
12. Registration of Trademarks
13. Disputes

V. Guidelines for Assembly and Manufacture

a) General Guidelines applicable to Licensing and Assembly/Manufacture
b) Specific Guidelines for Licensing
c) Specific Guidelines for Assembly/Manufacture

1. Design of Civil Works
2. Construction of Civil Works
3. Supervision of Construction
4. Supply and Installation of Production Equipment
5. Inspection and Tests
6. Management and Training

Annex IV

Amendments recommended to be incorporated in the Guidelines

PART I

Para. 5 — Delete the reference to "comprehensive contracts" and include one to cost reimbursable contracts.

Para. 17 — Include a reference to the necessity of providing for the application of a national legal code to the contract.

Para. 20 — The last sentence to be altered so as to constitute a warning to the purchaser to check that none of the terms of the contract infringe any national or international law applicable before signing it.

PART II

Contract A

The issue of price should also be dealt with in this section. In particular, the price structures as regards goods delivered FOB, CIF etc. should be mentioned.

Para. 21 — Refer to the advisability of having the supplier test the machinery under local conditions. Mention that the issue of the suitability of the machinery to those conditions is of concern to both parties. Suggest that where a purchaser relies on the supplier's representations the contract should perhaps deem the supplier to have tested the equipment under local conditions.

Para. 22 — The elements contained in paragraph 22, namely "warranty", "guarantee" and "after-sales service" should each be dealt with in a separate paragraph.

Para. 22(a) — Delete the explanations as to why after-sales services are of particular importance to purchasers from developing countries. State that lack of resources makes this an issue of concern.

Para. 22(c) — "Hidden defects" rather than "latent defects" should be dealt with.

In dealing with after-sales services in a new paragraph, these - as regards spare parts, repair and maintenance - should be described in greater detail. The question of training should be included as a possible after-sales service.

Para. 23 — The definition of "Penalties" should be amplified (UNCITRAL definition to be employed). The fact that the expression is sometimes substituted for "liquidated damages" should be mentioned. Reference should be made to the fact that some legal systems empower their courts to review the amount of the penalties and to reduce these should they prove excessive.

Para. 23(e) — It should be mentioned that liquidated damages/penalties are usually calculated on a percentage basis for each specified unit of time (week, month) up to a maximum amount and that once that maximum amount is reached the purchaser is usually entitled to terminate the contract.

Para. 23(d) — Refer to the purchaser's right of termination.

Para. 23(g) — Reference should be made to the benefits of the use of local resources in the assembling of equipment.

Contract B

Para. 24 — Delete the last sentence.

The purchaser should be warned against purchasing spare parts which are, so to speak, "dumped" because they are slow-moving.

Paras. 25+26 — These paragraphs should be adapted to apply to the new contracts A and B, that is to say, to distribution agreements.

Para. 26 — Delete "....to the most specific, e.g. that they will be capable of x hours' use".

Reference should be made to "hidden defects".

Para. 28 — The methods by which prices can be revised at the end of the fixed periods should be referred to.

It should be made clear that the possibility of employing a "most favoured customer" clause is a suggestion only.

Para. 29 — Leave out any reference to tax advantages.

The number of years during which the supplier will remain liable to supply spare parts should be described as a reasonable number of years after production of the equipment has ceased. In determining what is a reasonable period regard must be made to the anticipated life of the machinery.

It should be suggested in the Guidelines that a clause be included providing that on the bankruptcy of the supplier the supplier will furnish the purchaser with all the information available to enable the purchaser to buy the parts from third parties.

Para. 30 — This paragraph should be deleted and replaced with the suggestion that the purchaser ensure that the contract permits him/her to buy standard/proprietary parts from sources other than the supplier.

Contract C

The title should be amended to refer to civil works. Throughout this contract and wherever else in the "Guidelines" the expression "industrial engineer/architect" is used, it should be replaced by the word "engineer".

Para. 31(b) This should describe only those services related to design and supervision of the construction of civil works and technical assistance.

Para.32(a)+(b) Delete all references to "quasi-judicial" and refer instead to "impartiality in accordance with professional codes of ethics".

Para. 32(b) Redraft the last sentence so as to make it clear that although the engineer is paid by the purchaser he/she must use his/her professional standards even if decisions in line with these last do not favour the purchaser. "Certain standards of quality" to be substituted by "contract specifications".

Para. 33(a)

(iii) It should be explained that the lump sum is usually made payable by instalments.

(v) This method of payment should be described as "cost plus".

Para. 34 Include a reference to national legal standards.

Para. 35 Explain the question of the engineer's liability for gross negligence.

Contract D

The word "plant" is to be replaced throughout by the expression "production equipment". Additional paragraphs dealing with the running in and commissioning of the plant, the guarantee period, final acceptance, and training should be included in respect of this contract.

Para. 36 The various possibilities as regards the number of suppliers a purchaser may wish to use (a main supplier, several separate suppliers or a main supplier using sub-suppliers specified by the purchaser) should be explained and the risks and liabilities involved should be explained.

Para. 36(b) It should not appear that technological automation is recommended. The expression "appropriate technology" should be used and an explanation of this should be given in terms of the UNIDO definition.

Para. 37(b) It should be suggested that those persons present at the factory inspection of the equipment should also attend the assembly, erection and installation of that equipment.

Para. 38(b) Delete the first and last sentences of this sub-paragraph.

Para. 40 This paragraph should contain information regarding those aspects of after-sales services referable to the supply of production equipment, e.g. the replenishment of spare parts at the end of the guarantee period.

Contract E

It should be made clear that training is the most substantive component of this contract. It should also be explained that where one supplier only is used it may be that that one supplier will provide the services referred to in this contract for an "all-in" price with the price of the machinery. A paragraph on termination should be added to this section.

Para. 41 Include a reference to marketing and production development.

Para. 42 It should be suggested that the term of this contract be as brief as possible.

Para. 43 Productivity, technical and other studies to be included in the scope of this paragraph.

Para. 44 The possible use of the sanction of termination of the contract by the purchaser in enforcing standards of the services to be rendered should be mentioned.

Para. 45 This paragraph should refer to the necessity for a clause requiring the replacement of the supplier's staff at the request of the purchaser.

Para. 46 Reference should be made to the possibility of using bonus payments as an incentive to the supplier of the services.

Contract F

Mention should be made of the assistance which UNIDO can give in the transfer of technology.

Para. 48 "Know-how" is to be defined in terms of the putting together and applying in practice of the principles of some branches of engineering, technology or manufacturing technique, by one who has been initiated in it; as indicating the way in which a skilled man does his job; and as including sometimes information of a patentable kind or relating to processes which are secret. Examples of know-how should be cited. The purchaser should be advised to ensure that the definition of "know-how" in the contract is sufficient and accurate to the circumstances. The possibility of the rendering of additional services of technical assistance by the transfer should be referred to.

Para. 49 Line 7 - change "can limit" to "may insist upon limiting". Reference should be made to the necessity of achieving a balance between the parties' requirements. The issue of fair limitations should be raised. The purchaser should be advised that counterbalancing clauses to the limitations mentioned can be included in the contract e.g. the requirement of secrecy can be made dependent upon the information not becoming part of the public domain.

The tone of this paragraph should be changed so as to ensure that a purchaser reading it will not consider the limitations mentioned as being the right of the supplier.

Para. 50 The technology should be referred to as "appropriate" (as defined by UNIDO).

Para. 52(a) A brief description of the warranties should be given.

Para. 53(b) Delete the second sentence.

Para 53(c)(ii) Exclude the reference to "fair market price".

(iii) Change the last sentence to take into account joint ventures.

Para. 53 (e) Reference should be made to the fact that the legislation of some countries limits the permissable amount of royalties and the export of such royalty payments by the purchaser.

Para. 53 (d) The technical assistance mentioned should be described as "additional".

The purchaser should be warned against allowing the inclusion of a clause requiring payments by the purchaser should the latter (a) fail to commence production by a certain date, or (b) fail to achieve certain production/profits targets.

PART III

A paragraph should be added relating to the amendment of contracts necessitated by changed circumstances. The expression "arbitrator" will replace "arbiter".

Para. 54 This paragraph should be entitled "Preamble".

Para. 55 The contents of this paragraph can be included in "general considerations...." in Part I.

Para. 58 Reference should be made to the importance of the ownership of documents transmitted to the purchaser under know-how contracts.

Para. 59(b) It should be made clear that the subject matter of a contract (be it machinery or otherwise) should conform with the local standards and/or legislation.

Para. 60 The issue of modes of payment (countertrade, barter etc) should be dealth with.

Para. 63 **Bonds should be mentioned as a method by which security for performance can be provided.**

Para. 64 **The reader should be referred to the comments made on the question of damages (para. 23).**

Para. 65 **Force Majeure should be explained in terms of those matters traditionally included under the expression "Acts of God". In addition, the FIDIC conditions in this regard should be summarized.**

Para. 66 **Reference should be made to the necessity of balancing the parties' rights and liabilities in the event of a termination of the contract. It should be suggested that any dispute in this regard be referred to arbitration. The distinction between termination by the act of one party and that occurring when the term of the contract has expired should be explained. The purchaser should be alerted to the disadvantages of an automatic renewal of the contract.**

Para. 67 **The non-binding nature of the decisions of an independent expert or a conciliator should be explained.**

Para. 67 (e) **It should be mentioned that the purchaser's familiarity with his/her country's law may be a good reason for him/her to insist on his/her own country's law being made applicable.**